Supreme Court, U.S.
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No. 89-577

In The

Supreme Court of the United States

October Term, 1989

WALDO, R., INC., R. WALDO, INC.,
and RUSSELL WALDO, Individually,

Petitioners,

v.

PIPEFITTERS HEALTH AND WELFARE TRUST,
PIPEFITTERS PENSION TRUST
and
PIPEFITTERS LOCAL UNION NO. 562; JOHN MARSHALL,
administrator and fiduciary of all plaintiff funds;
LESTER GROSSL, JOE BARRY, DON DEVITT
and ROBERT MCDONALD, trustee,

Respondents.

PETITIONERS' REPLY MEMORANDUM

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PETITIONERS' REPLY MEMORANDUM

Respondents, in their opposing memorandum in Docket No. 89-577, present nothing more than a stark assertion that, in effect, Petitioners have presented nothing for the Court to review. Respondents cite no authority or cogent argument to either support their position or to demonstrate that Petitioners might be incorrect in their positions or the authorities in support of those positions. Petitioners contend that Respondents' memorandum is hollow because Respondents cannot find authority with which to rebut Petitioners' authoritative arguments.

The inability of the Respondents to face the issues presented in the petition, especially in light of the

importance and significance of these issues, bolsters the need for plenary review.

Respondents, in their opposing memorandum, have attempted to deceive this Honorable Court by suggesting that services were performed "after a unanimous vote by the employees . . . ." The attempted deception becomes manifest when it is considered that, at no time, was a National Labor Relations Board-sanctioned election ever conducted. The "unanimous vote" referred to by Respondents took place in the empty room of a tavern on May 7, 1984 — long *after* either of the two agreements at issue were signed. Further, the union check-off authorization cards, which were signed at the time of the non-sanctioned "unanimous vote," were invalidated by the N.L.R.B. At no time, either before, since or during the barroom referendum, has there ever been a sanctioned representation election.

Respondents also misrepresented the following facts in their opposing memorandum:

1. That the agreement(s) which are the subject of this case are "prehire" agreements; and
2. That such agreement(s) were "lawful."

Both statements are untrue. The agreements were 29 U.S.C. § 158(a) agreements and, because they were achieved by means of unfair labor practices, are either or both void and illegal and unenforceable.

Due to the Respondents' inability to present contrary argument to the Petitioners' positions, the cavalier attitude and approach they have taken with respect to that inability, and the misrepresentations in their memorandum suggests that summary reversal of the Eighth Circuit's Opinion and Judgment is in order

under Rules of the Supreme Court of the United States, Rule 23.1, thereby reinstating the judgment of the Eastern District of Missouri.

Respectfully submitted,

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Dated: November 1, 1989